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Filing date: **11/25/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77370042
Applicant	Webid Consulting Ltd.
Applied for Mark	MANWEAR
Correspondence Address	JAMES A. WAHL KRASS MONROE, P.A. 8000 NORMAN CENTER DR , STE 1000 MINNEAPOLIS, MN 55437-1178 UNITED STATES trademark@krassmonroe.com
Submission	Reply Brief
Attachments	manwear class 25 degrandpre chait - ttab appeal reply brief 2_e_.pdf (15 pages) (997019 bytes)
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Signature	/James A. Wahl/
Date	11/25/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant:	Webid Consulting Ltd.)	
)	
Serial No:	77/370,042)	Trademark Law Office: 114
)	
Filing Date:	February 14, 2008)	Attorney: Brendan D. McCauley
)	
Mark:	MANWEAR)	

APPLICANT'S REPLY BRIEF

I. INTRODUCTION.

The Applicant has appealed to the Trademark Trial and Appeal Board from the final decision of the Examining Attorney refusing registration of the above-referenced mark. The Applicant submitted its Appeal Brief on September 14, 2009. The Examining Attorney's Appeal Brief was submitted on November 5, 2009.

The Applicant respectfully submits that its MANWEAR mark is distinctive, and that the Examining Attorney has failed to meet his burden of proof to establish descriptiveness.

II. REBUTTAL ARGUMENT.

The Applicant's mark is MANWEAR for "Men's clothing, namely, coats, jackets, vests, sweaters, t-shirts, shirts, jerseys, shorts, parkas, pullovers, wind-jackets, pants, raincoats; sportswear, namely, sweatsuits, leisure suits, jeans, sport jackets, overalls; underwear, namely,

short and long sleeve tee-shirts, long johns, briefs, boxers; Men's leather clothing, namely, coats, jackets, vests, shorts, parkas, pants, raincoats; Men's fashion accessories, namely, ties, socks, caps, gloves, belts, wristband, watch wristband, hats, shoes and scarves” in Class 25. The evidence in support of descriptiveness offered by the Examining Attorney is wholly insufficient.

The Examining Attorney’s evidence and related arguments focus on (a) dictionary definitions of the terms man and wear, (b) excerpted articles discussing the term menswear, (c) listings from the *Manual of Acceptable Identifications of Goods and Services* containing the term wear, and (d) matter from 14 Internet pages which the Examining Attorney asserts show descriptiveness of the mark. Each of these categories of evidence are more supportive of the Applicant’s position than the Examining Attorney’s descriptiveness arguments.

(a) Dictionary Definitions. As set out in the Applicant’s Appeal Brief, the actual dictionary definitions of man and wear do not support the Examining Attorney’s position. The Examining Attorney treats the terms “man” and “mens” as equivalent terms, but both the definitions of these terms and the appearance and meaning of the Applicant’s mark establish the difference. Menswear is a recognized term of longstanding usage. Substituting “man” for “mens” effects a fundamental change in the appearance, sound and meaning of the resulting term.

(b) Menswear Articles. The litany of articles in which the term menswear is used establishes absolutely nothing concerning the meaning of the Applicant’s manwear mark. The Examining Attorney contends that use of the singular “man” instead of the plural “mens” will not leave consumers unclear as to the nature of the Applicant’s services. This position ignores the obvious fact that the terms are different in appearance, sound and meaning, and will be perceived differently by consumers.

(c) Goods and Services Identifications. The Examining Attorney recites a listing of

recognized uses of the term wear in connection with other terms, and asserts that this establishes consumer understanding. The Examining Attorney lists the following terms - beachwear, footwear, headwear, infantwear, loungewear, neckwear, nightwear, rainwear, skiwear, sleepwear, swimwear, and underwear - asserted to be entries in the Acceptable ID Manual. The term MANWEAR does not appear in these listings, and this purported evidence has no weight relating to descriptiveness.

(d) Internet Pages. From the entirety of information available via the Internet, the Examining Attorney produces 14 pages asserted to show use of the term manwear in a descriptive manner. Items 1 – 11 and 13 are excerpts from the websites of foreign manufacturers located in Shanghai, mainland China, Turkey, Italy, Taiwan, etc. Given the grammatical errors obvious in the text of these articles (e.g. “Ladies fashion (rather than fashions), Accessory (rather than Accessories), finished goods of leisure suits, men workerwear, woman workerwear, woman-garment, blzase, elegant and sporty wovens, etc.) it is likely that use of the term manwear results from improper translation rather than an intentional use of the term to identify a category of clothing.

Furthermore, there are serious questions about whether many of the sites listed by the Examining Attorney are still active. Attached as Exhibits A, B, C, D and E are internet print-outs from November 25, 2009 showing that the seride.com website (Examiner’s No. 6) is no longer active, the Oceaners Industrial Limited listing on go4WorldBusiness.com (Examiner’s No. 7) has been revised to list “mens wear” rather than “manwear”, the made-in-China.com website (Examiner’s No. 9) no longer lists “interlining for manwear” or “manwear”, the jlcaterringsupplies.com website (Examiner’s No. 11) is no longer active, and the trustexporter.com website (Examiner’s No. 13) no longer lists “manwear” or “Oceanus Industrial”. These exhibits show that at least five of the 12 websites listed by the Examiner are

either no longer active or no longer stand for the proposition cited by the Examining Attorney.

Moreover, even if use of manwear in these materials is intentional and continuing, the materials have no evidentiary value. In the case of *In re Men's International Professional Tennis Council*, 1 USPQ2d 1917, 1918 (TTAB 1986), the Board considered articles in foreign publications to be of limited evidentiary value. The Board stated that "it is fair to presume that the *Manchester Guardian Weekly* has little circulation here, [thus, we cannot] infer that these foreign uses have had any material impact on the perceptions of the relevant public in this country." In the case of *In re King Koil Licensing Company, Inc.*, 79 USPQ2d (TTAB 2006), the Board held that material from foreign web sites had little if any probative value in relation to a mark used for mattresses. In this case, the foreign web sites listed by the Examining Attorney are unlikely to have any material impact of the perceptions of the relevant public in this country, and should be given no probative value whatsoever.

The two remaining websites that appear to originate from the United States, items 12 and 14, are textual references to a specific person's attire. This is a *de minimus* level of use that falls far short of meeting the Examining Attorney's burden of proving descriptiveness.

Since the Examining Attorney has not met his burden of proof, the refusal of registration must be reversed.

III. CONCLUSION

The Applicant's mark is not merely descriptive for online retail clothing services. It is an incongruous, suggestive mark that is not commonly used or understood to relate in any way to these services. The evidence of record falls far short of meeting the Examiner's burden of proving descriptiveness. Accordingly, the Applicant submits that its Application is in condition for allowance, and requests that the refusal of registration be reversed and that the mark be promptly approved for publication and registration.

Respectfully submitted,

Krass Monroe, P.A.

Dated: November 25, 2009

By /James A. Wahl/

James A. Wahl (#170501)
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Telephone: (952) 885-5991

KM: 4811-2260-7621, v. 1

Exhibit A
seride.com website (Examiner's No. 6) As of 11/25/2009
(site is no longer active)

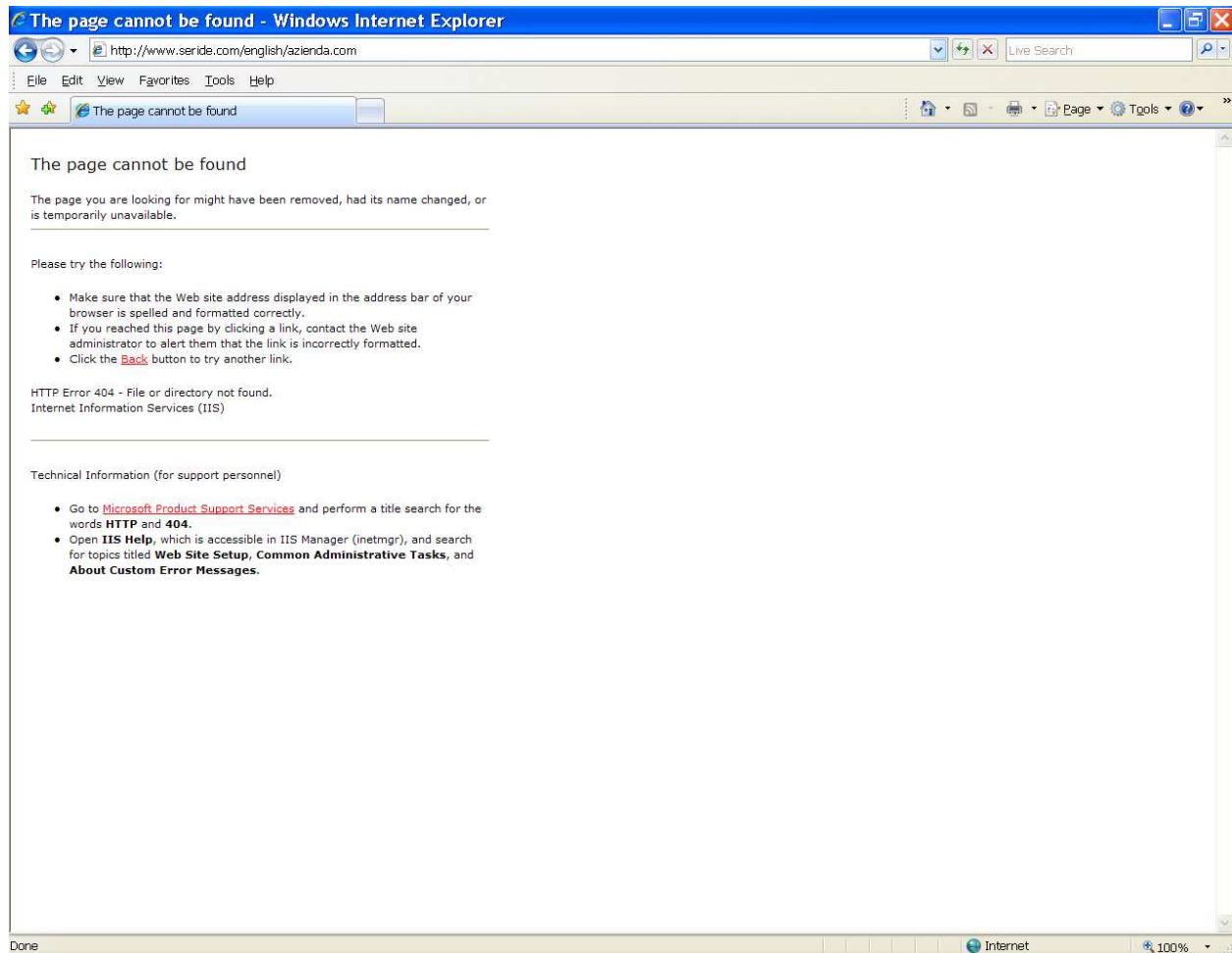




Exhibit B
Oceanus Industrial Limited Site (Examiner's No. 7) As of 11/25/2009
(revised to list "mens wear" not "manwear")

Kids wear, mens wear, ladies wear, jeans, denim jacket, outerwear, coat, down coat, t-shirt, po - Windows Internet Explorer

http://www.go4worldbusiness.com/search/memberdetails.asp?objid=615048

File Edit View Favorites Tools Help

Kids wear, mens wear, ladies wear, jeans, d...

WorldBusiness.com
Connecting Businesses WorldWide

Celebrating 12 Years of Trust

Over 1600 latest buy leads
Click here to view

Contact Buyers Directly
Find Qualified Suppliers

Home Suppliers Buyers Products Trade Leads

Search Go

Join Now! Login Buy Leads Post Lead Contact Us Help Site Map Quick Links GO 简体中文

Customer Feedback

Salleah Chudasama from Kenya
"This is the BEST website I've ever visited. It has changed my business completely. I will keep renewing my membership till the day the site closes down"

For Buyers

Find Qualified Suppliers
■ [Post your requirement](#)

How to Reach Qualified Suppliers
■ [How to Buy](#)

For Suppliers

Not a member yet?
■ [Join as a trial member](#)

Already a member!
■ [Contact buyers directly](#)
■ [View your pending inquiries](#)

How to Reach Qualified Buyers
■ [How to Sell](#)

Trade Leads

[Latest Buy Trade Leads](#)
[Trade Leads by Industry](#)
[Post My Trade Lead](#)
[Edit My Trade Lead](#)

Membership Benefits

- Find new buyers and explore new markets
- Identify new business lines for expansion
- Access latest buying leads from importers
- Contact listed importers and exporters directly
- Discover new suppliers to get best deals
- Company profile displayed at 114

Full Contact details are available only to Gold and Silver Members.

Login Password Go [Forgot Your Password?](#)

Click here to subscribe for [Gold / Silver membership](#)

Oceanus Industrial Limited [Send Mail](#)

Business	Established	Sales
Manufacturer	1993	1 million to 25 million USD

Deals In Export Of : Kids wear, mens wear, ladies wear, jeans, denim jacket, outerwear, coat, down coat, t-shirt, polo, shirt, blouse, children's 2 piece set, romper, jumper, skirt, dress, denim skirt

Certifications : ISO9000

Email: [Send Mail](#) Flat E, 11/F, Shen Rong Bldg
Fu Qiang Rd, Futian
Shenzhen 518048
China

Contact Person: Sam

Our Products ShowRoom 5 Products

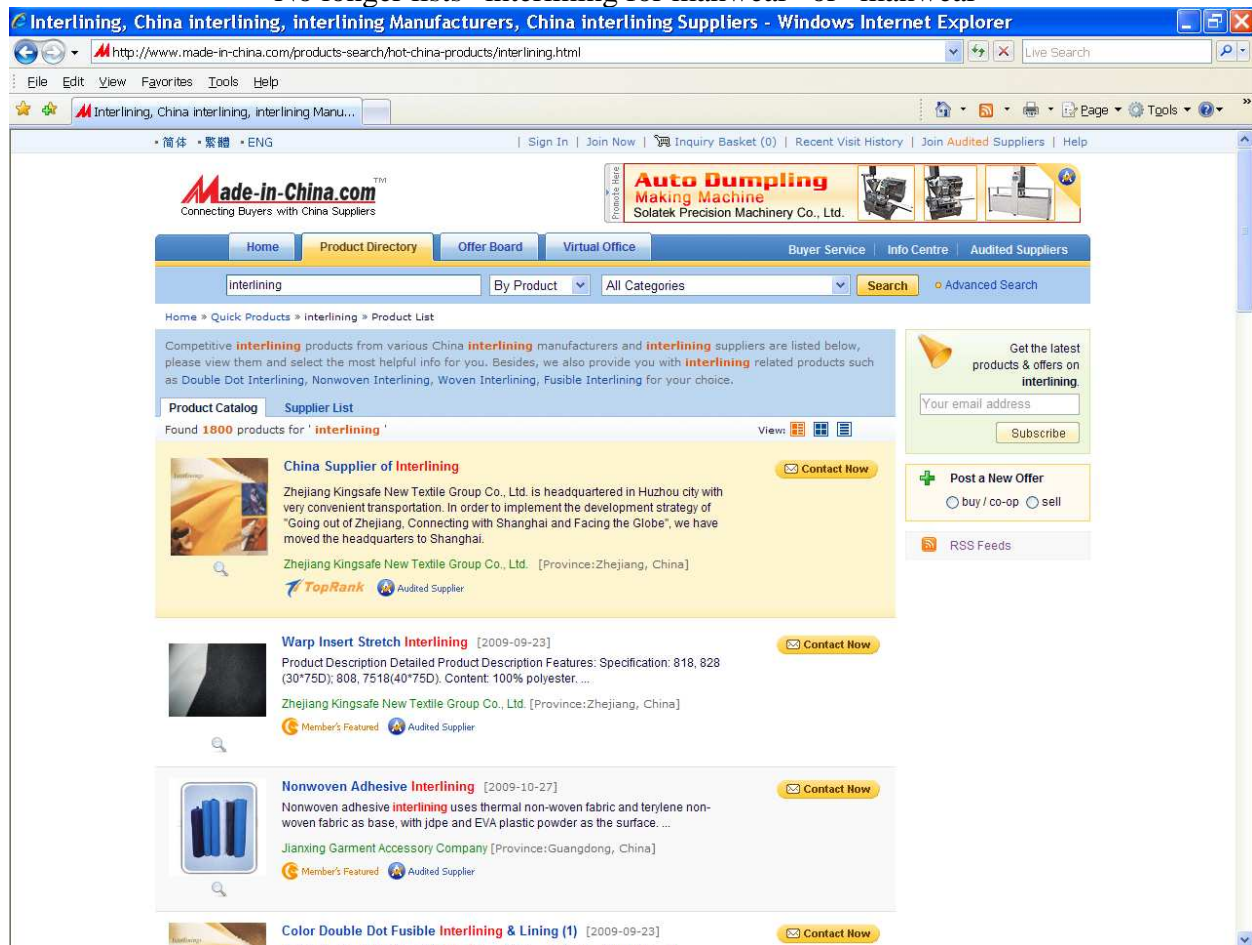
Product Name	Select
Coat	<input type="checkbox"/>
Jacket	<input type="checkbox"/>
Jeans	<input type="checkbox"/>
Shirt	<input type="checkbox"/>
T-shirt	<input type="checkbox"/>

Select ☒ and click [Send Inquiry To Selected Items](#)
[View My Inquiry List](#)

Page 1 [Previous Page](#)

[Search Products, Companies and Trade Leads](#)

Exhibit C
Made-In-China.com (Examiner's No. 9) As of 11/25/2009
No longer lists "interlining for manwear" or "manwear"



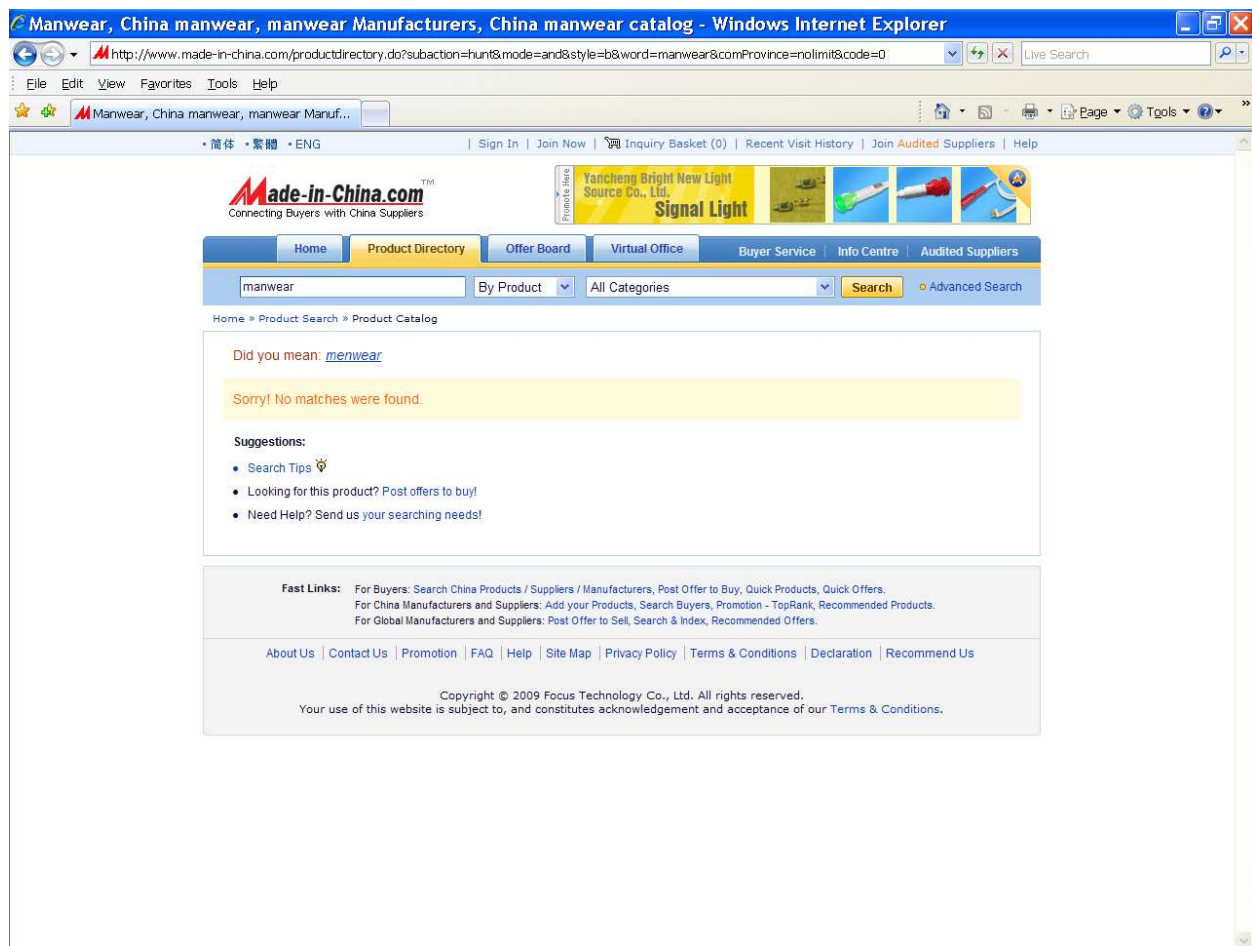


Exhibit D
Jlcateringsupplies.com / A3Shop (Examiner's No. 11) As of 11/25/2009
(Site is no longer active)

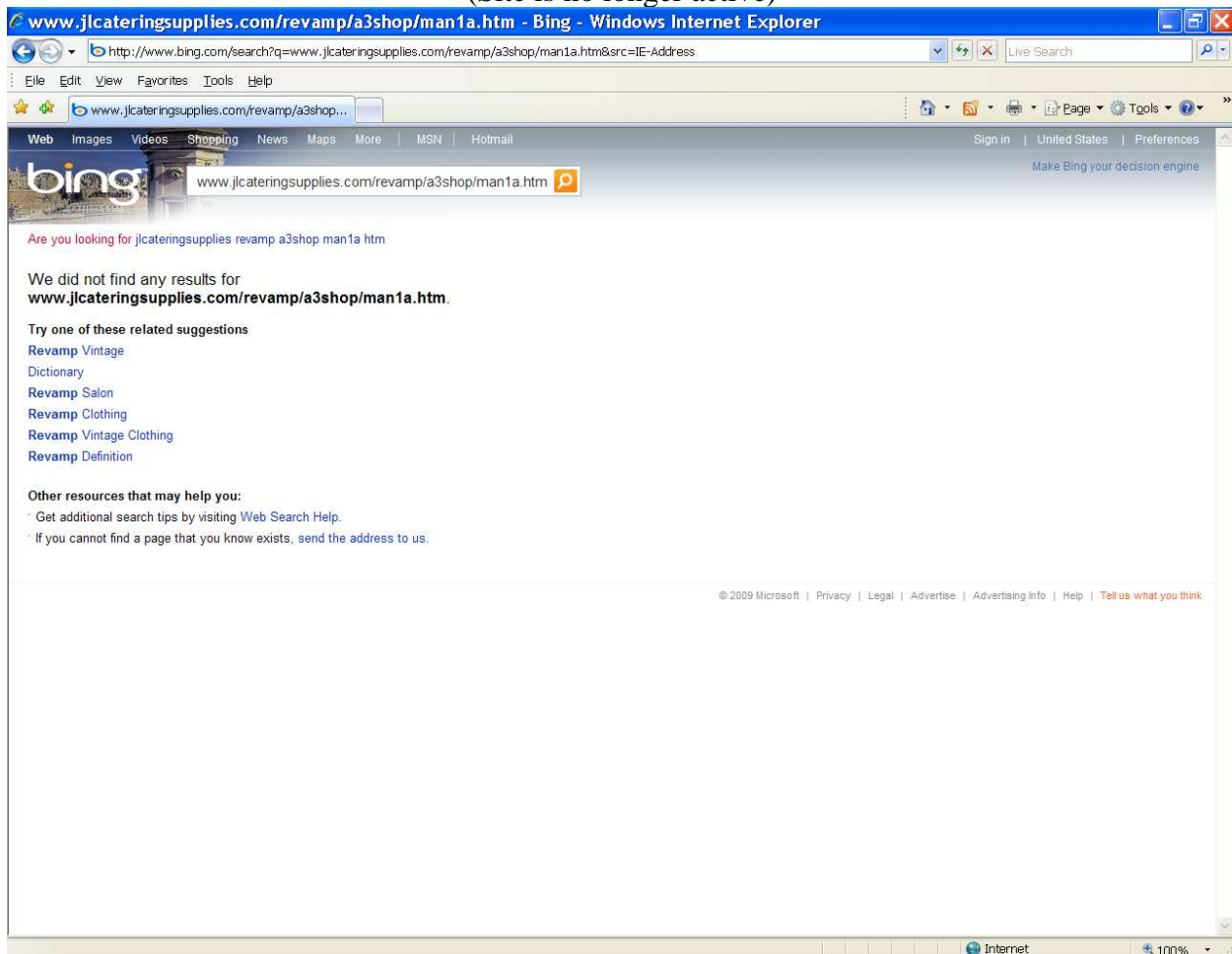


Exhibit E
TrustExporter.com website (Examiner's No. 13) As of 11/25/2009
(no longer lists manwear or Oceanus Industrial)

TrustExporter.com

Home Exporter Directory Product Directory Buying Leads For Sellers

Search [] Search Not a member yet? [Join For FREE](#)

Clothing & Accessories

- » [Baby Garments](#) (31)
- » [Boys Clothing & Accessories](#) (13)
- » [Bridal](#) (12)
- » [Coats & Jackets](#) (56)
- » [Eyewear](#) (16)
- » [Footwear](#) (432)
- » [Girls Clothing & Accessories](#) (108)
- » [Gloves](#) (8)
- » [Hats & Caps](#) (35)
- » [Jeans](#) (55)
- » [Jewelry](#) (60)
- » [Leather & Fur](#) (44)
- » [Lingerie](#) (33)
- » [Maternity](#) (2)
- » [Mens Clothing & Accessories](#) (63)
- » [Pants & Trousers](#) (7)
- » [Raincoats](#) (2)
- » [Shirts & Blouses](#) (17)
- » [Skirts & Dresses](#) (10)
- » [Sleepwear](#) (1)
- » [Socks & Stockings](#) (17)
- » [Specialty Apparel](#) (10)
- » [Sportswear](#) (59)
- » [Suits](#) (13)
- » [Sweaters](#) (26)
- » [Swimwear](#) (6)
- » [T-Shirts](#) (79)
- » [Timepieces](#) (1)
- » [Travel Accessories](#) (4)
- » [Underwear](#) (66)
- » [Uniforms](#) (12)
- » [Womens Clothing & Accessories](#) (44)

For Buyers

Welcome buyer-0 (First Visit: 2009-11-26 4:30:34)
Your Message: 0 companies (0 new / 0 reply)
[Post Your Buy Offer](#)

Home > [Exporter Directory](#) > [Clothing & Accessories](#)

[Companies List](#) [Products Catalog](#)

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www.EddieBauer.com

Shirt Accessories Range
Collar Stiffeners Shirt Luggage etc Specialises in shirt accessories
www.jamesandlongbourne.co.uk

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TapouT, SPRAWL, Warrior, Affliction In Stock, Low Prices, Super Fast!
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Showing 381 - 400 of 500, total 25 pages [First](#) [Previous](#) [Next](#) [Last](#)

Select Product under and click [INQUIRE NOW](#) or [ADD TO BASKET](#)

Select All ? Clear All ?

[CNI] Vicktrade International Trade Co., Ltd
381 Key Products/Services: coat, Hoody, jacket, POLO shirt, sweat shirt, T-shirt short sleeve, T-shirt long-sleeve, swimming suit, NFL jersey, NHL jersey, NBA jersey, football jersey, Addidas jersey, Armani jeans,... ☐ select

[CNI] Roch & Home Designs Manufacturing
382 Key Products/Services: Category : Stocklot Garments, Ready to Ship Garments & Apparels, Footwear, Shoes, Components & Accessories, Kids Apparel & Garment, Knitwear, Knitted Fabrics & Hosiery Products, Ladies... ☐ select

[CNI] naniing hengrun hongsu trading co.,ltd
383 Key Products/Services: we can make and export kinds of clothes and pants ☐ select

Clothing & Accessories Manufacturers - Windows Internet Explorer

http://www.trustexporter.com/tecom-7-20/Clothing-Accessories

File Edit View Favorites Tools Help

Clothing & Accessories Manufacturers

392 **[CNI] Zhenhon Shoes Material Co.,Ltd**
Key Products/Services: waterproof stripe insole board, waterproof fiber insole board, stitch-bonded non-woven fabric, spray-bonded non-woven fabric, artificial leather substrate, inner lining, chemical sheet, ... ☐ select

393 **[CNI] FULIKAI UNDERWEAR MANUFACTORY(SHENZHEN)CO.,LTD**
Key Products/Services: The main products include silicone bras, lace bras, cloth bras,silicone breast enhancers, natural bras, feather-lite bras, embroidered bras, natural feather-lite bras, diamond bras and b... ☐ select

394 **[CNI] Kingball Toy Product Co.,Ltd**
Key Products/Services: EVA Slippers EVA Sandals EVA Flip flops ☐ select

395 **[CNI] Etosupplier International Co., Ltd**
Key Products/Services: wholesale ad hardy,christian audigier,affliction,abercrombie&fitch,lacoste,polo ralph lauren,true religion jeans,gucci,coach,lv,chanel,burberry ☐ select

396 **[CNI] FOOTWEARSALON company**
Key Products/Services: athletic shoes, fashion boots, snow boots, casual shoes, timberland shoes, sandals,slippers etc. and our brands list includes nike, puma, prada, gucci, timberland, ugg, adidas, LV, ato ... ☐ select

397 **[CNI] FULIKAI UNDERWEAR MANUFACTORY(SHENZHEN)CO.,LTD**
Key Products/Services: invisible bra ,silicone bra ,silicone breast forms ,silicone enhancers. ☐ select

398 **[CNI] Armo Plastic Product(Guang Zhou) Co., Ltd**
Key Products/Services: mobilon tape, bra accessories, TPU Bra Strap,TPU Elastic Tapes, TPU Extrusion,Clothing Accessories,TPU Film&PVC Film,TPU ☐ select

399 **[CNI] Yashang Jewelry Co.**
Key Products/Services: bracelet,ring,necklace,pendant,cuff links and so on. ☐ select

400 **[CNI] Wenzhou qianfeng international trade Co.,Ltd**
Key Products/Services: jeans,sunglasses,fastener and trip scissors ☐ select

Select company above and click **INQUIRE NOW** or **ADD TO BASKET**

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oceanus industrial-Trustexporter Search - Windows Internet Explorer

http://search.trustexporter.com/searchen.asp?keyword=oceanus+industrial&k=42

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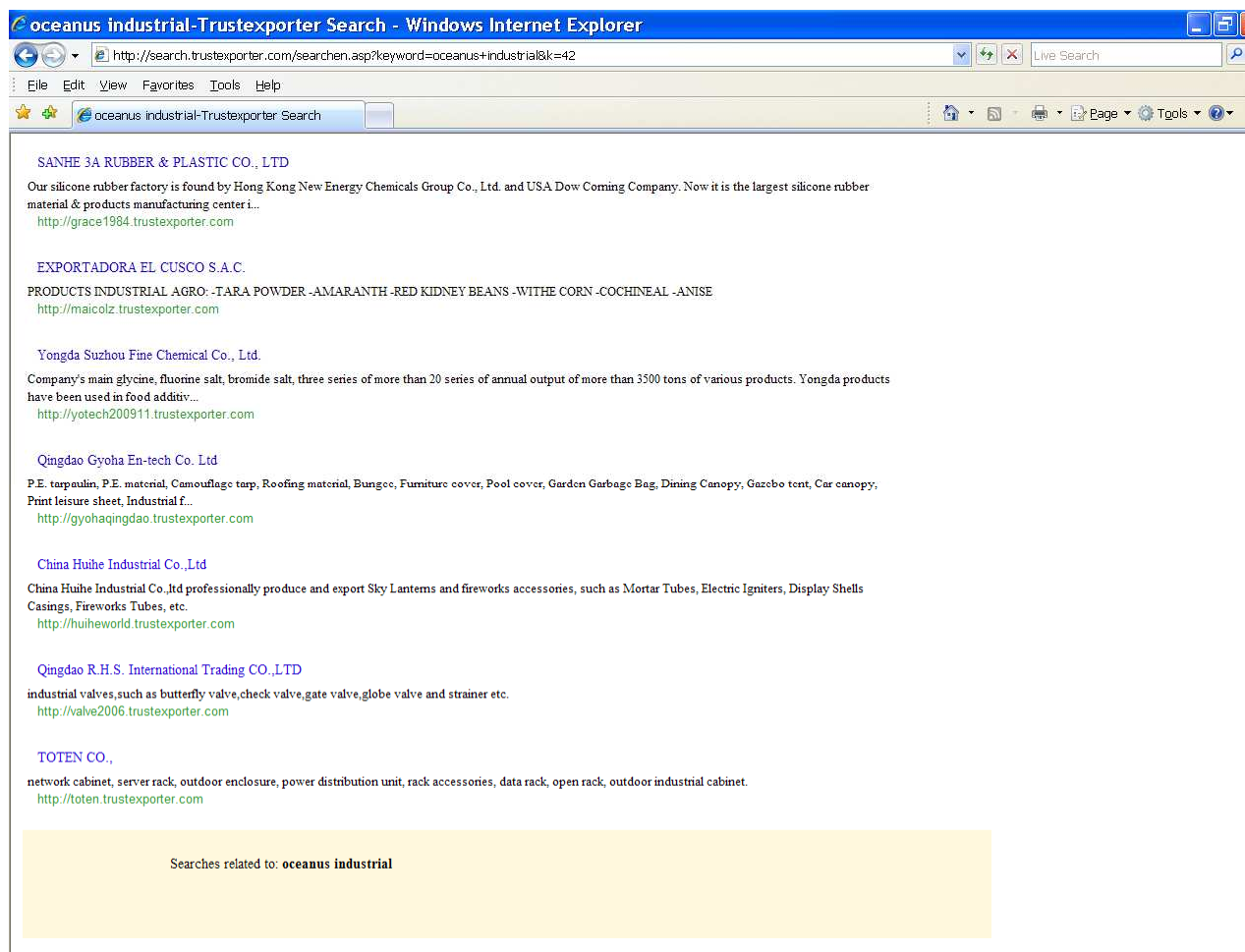
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KM: 4811-2260-7621, v. 1